



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2006 REGULAR SESSION

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SENATE BILL NO. 38

AS ENACTED

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MONDAY, APRIL 10, 2006

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RECEIVED AND FILED  
DATE April 21, 2006  
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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

AN ACT relating to general principles of justification.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

1       Section 1. KRS 503.010 is amended to read as follows:

2       The following definitions apply in this chapter unless the context otherwise requires:

3       (1) "Deadly physical force" means force which is used with the purpose of causing  
4       death or serious physical injury or which the defendant knows to create a substantial  
5       risk of causing death or serious physical injury.

6       (2) "Dwelling" means a building or conveyance of any kind, including any attached  
7       porch, whether the building or conveyance is temporary or permanent, mobile or  
8       immobile, which has a roof over it, including a tent, and is designed to be  
9       occupied by people lodging therein at night~~[any building or structure, though~~  
10       ~~movable or temporary which is for the time being either totally or partially the~~  
11       ~~defendant's home or place of lodging].~~

12       (3) "Imminent" means impending danger, and, in the context of domestic violence and  
13       abuse as defined by KRS 403.720, belief that danger is imminent can be inferred  
14       from a past pattern of repeated serious abuse.

15       (4) "Physical force" means force used upon or directed toward the body of another  
16       person and includes confinement.

17       (5) "Residence" means a dwelling in which a person resides either temporarily or  
18       permanently or is visiting as an invited guest.

19       (6) "Vehicle" means a conveyance of any kind, whether or not motorized, which is  
20       designed to transport people or property.

21       SECTION 2. A NEW SECTION OF KRS CHAPTER 503 IS CREATED TO  
22       READ AS FOLLOWS:

23       (1) A person is presumed to have held a reasonable fear of imminent peril of death  
24       or great bodily harm to himself or herself or another when using defensive force  
25       that is intended or likely to cause death or great bodily harm to another if:

1 (a) The person against whom the defensive force was used was in the process of  
 2 unlawfully and forcibly entering or had unlawfully and forcibly entered a  
 3 dwelling, residence, or occupied vehicle, or if that person had removed or  
 4 was attempting to remove another against that person's will from the  
 5 dwelling, residence, or occupied vehicle; and

6 (b) The person who uses defensive force knew or had reason to believe that an  
 7 unlawful and forcible entry or unlawful and forcible act was occurring or  
 8 had occurred.

9 (2) The presumption set forth in subsection (1) does not apply if:

10 (a) The person against whom the defensive force is used has the right to be in  
 11 or is a lawful resident of the dwelling, residence, or vehicle, such as an  
 12 owner, lessee, or titleholder, and there is not an injunction for protection  
 13 from domestic violence or a written pretrial supervision order of no contact  
 14 against that person; or

15 (b) The person sought to be removed is a child or grandchild, or is otherwise in  
 16 the lawful custody or under the lawful guardianship of, the person against  
 17 whom the defensive force is used; or

18 (c) The person who uses defensive force is engaged in an unlawful activity or is  
 19 using the dwelling, residence, or occupied vehicle to further an unlawful  
 20 activity; or

21 (d) The person against whom the defensive force is used is a peace officer, as  
 22 defined in KRS 446.010, who enters or attempts to enter a dwelling,  
 23 residence, or vehicle in the performance of his or her official duties and the  
 24 officer identified himself or herself in accordance with any applicable law  
 25 or the person using force knew or reasonably should have known that the  
 26 person entering or attempting to enter was a peace officer.

27 (3) A person who is not engaged in an unlawful activity and who is attacked in any

other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a felony involving the use of force.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

Section 3. KRS 503.050 is amended to read as follows:

(1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person.

(2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that such force is necessary to protect himself against death, serious physical injury, kidnapping,~~[-or]~~ sexual intercourse compelled by force or threat, felony involving the use of force, or under those circumstances permitted pursuant to Section 2 of this Act.

(3) Any evidence presented by the defendant to establish the existence of a prior act or acts of domestic violence and abuse as defined in KRS 403.720 by the person against whom the defendant is charged with employing physical force shall be admissible under this section.

(4) A person does not have a duty to retreat prior to the use of deadly physical force.

Section 4. KRS 503.070 is amended to read as follows:

(1) The use of physical force by a defendant upon another person is justifiable when:

(a) The defendant believes that such force is necessary to protect a third person against the use or imminent use of unlawful physical force by the other person; and

1 (b) Under the circumstances as the defendant believes them to be, the person  
 2 whom he seeks to protect would himself have been justified under KRS  
 3 503.050 and 503.060 in using such protection.

4 (2) The use of deadly physical force by a defendant upon another person is justifiable  
 5 when:

6 (a) The defendant believes that such force is necessary to protect a third person  
 7 against imminent death, serious physical injury, kidnapping, ~~or~~ sexual  
 8 intercourse compelled by force or threat, or other felony involving the use of  
 9 force, or under those circumstances permitted pursuant to Section 2 of this  
 10 Act; and

11 (b) Under the circumstances as they actually exist, the person whom he seeks to  
 12 protect would himself have been justified under KRS 503.050 and 503.060 in  
 13 using such protection.

14 (3) A person does not have a duty to retreat if the person is in a place where he or she  
 15 has a right to be.

16 Section 5. KRS 503.080 is amended to read as follows:

17 (1) The use of physical force by a defendant upon another person is justifiable when the  
 18 defendant believes that such force is immediately necessary to prevent:

19 (a) The commission of criminal trespass, robbery, ~~or~~ burglary, or other felony  
 20 involving the use of force, or under those circumstances permitted pursuant  
 21 to Section 2 of this Act, in a dwelling, building or upon real property in his  
 22 possession or in the possession of another person for whose protection he acts;  
 23 or

24 (b) Theft, criminal mischief, or any trespassory taking of tangible, movable  
 25 property in his possession or in the possession of another person for whose  
 26 protection he acts.

27 (2) The use of deadly physical force by a defendant upon another person is justifiable

1 under subsection (1) only when the defendant believes that the person against whom  
2 such force is used is:

- 3 (a) Attempting to dispossess him of his dwelling otherwise than under a claim of  
4 right to its possession; or
- 5 (b) Committing or attempting to commit a burglary, robbery, or other felony  
6 involving the use of force, or under those circumstances permitted pursuant  
7 to Section 2 of this Act, of such dwelling; or
- 8 (c) Committing or attempting to commit arson of a dwelling or other building in  
9 his possession.

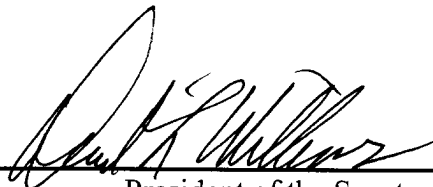
10 (3) A person does not have a duty to retreat if the person is in a place where he or she  
11 has a right to be.

12 SECTION 6. A NEW SECTION OF KRS CHAPTER 503 IS CREATED TO  
13 READ AS FOLLOWS:

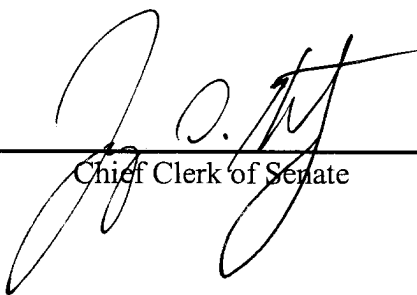
14 (1) A person who uses force as permitted in Section 2 of this Act and in KRS  
15 503.050, 503.070, and 503.080 is justified in using such force and is immune  
16 from criminal prosecution and civil action for the use of such force, unless the  
17 person against whom the force was used is a peace officer, as defined in KRS  
18 446.010, who was acting in the performance of his or her official duties and the  
19 officer identified himself or herself in accordance with any applicable law, or the  
20 person using force knew or reasonably should have known that the person was a  
21 peace officer. As used in this subsection, the term "criminal prosecution"  
22 includes arresting, detaining in custody, and charging or prosecuting the  
23 defendant.

24 (2) A law enforcement agency may use standard procedures for investigating the use  
25 of force as described in subsection (1) of this section, but the agency may not  
26 arrest the person for using force unless it determines that there is probable cause  
27 that the force that was used was unlawful.

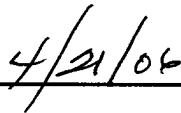
- 1 (3) The court shall award reasonable attorney's fees, court costs, compensation for  
2 loss of income, and all expenses incurred by the defendant in defense of any civil  
3 action brought by a plaintiff if the court finds that the defendant is immune from  
4 prosecution as provided in subsection (1).

  
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President of the Senate

  
\_\_\_\_\_  
Speaker-House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date   
\_\_\_\_\_